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5 KLAUS KUBLER,  
6 Plaintiff,  
7 v.  
8 GENERAL MOTORS LLC,  
9 Defendant.

Case No. 23-cv-04325-SI

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT'S  
MOTION TO DISMISS PLAINTIFF'S  
FIRST AMENDED COMPLAINT**

Re: Dkt. No. 36

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11 Defendant has filed a motion to dismiss the fourth and fifth causes of action of plaintiff's  
12 First Amended Complaint ("FAC"). Dkt. No. 36. Plaintiff opposes and requests leave to file a  
13 Second Amended Complaint. Dkt. No. 38. Pursuant to Civil Local Rule 7-1(b), the Court determines  
14 that the motion is suitable for resolution without oral argument, and VACATES the January 5, 2024  
15 hearing. For the reasons set forth in the order on motion to dismiss at Dkt. No. 40 of 23-cv-04319-  
16 *SI, Poonam D. Shah v. General Motors LLC*, the Court GRANTS defendant's motion to dismiss the  
17 fraud claims<sup>1</sup> without leave to amend and DENIES defendant's motion to dismiss claims under the  
18 "unlawful" and "unfair" prongs of Business & Professions Code § 17200 (California's Unfair  
19 Competition Law).<sup>2</sup>

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21 <sup>1</sup> The fraud claims include the fourth cause of action alleging affirmative misrepresentation  
22 and fraudulent concealment and claims under the "fraudulent" prong of Business & Professions  
23 Code § 17200.

24 <sup>2</sup> The First Amended Complaints and briefs in 23-cv-04319-SI and this action are virtually  
25 identical. The Court notes that plaintiff in this action purchased the subject vehicle On January 3,  
2017, so there are fewer allegations of pre-sale knowledge in this action than in 23-cv-04319, where  
the plaintiff bought the subject vehicle on July 17, 2019. *See* Dkt. No. 34 ¶¶ 6, 16-17.

26 Concurrently to this motion to dismiss defendant filed a request for judicial notice requesting  
27 the Court take judicial notice that the United States Environmental Protection Agency estimated that  
28 2020-2022 model-year Chevrolet Bolts have a total range of 259 miles. Dkt. No. 37. The Court  
notes that plaintiff's Bolt's model-year is pre-2020, but nevertheless GRANTS this request for  
judicial notice because this data is not subject to reasonable dispute and is publicly available on the  
EPA's website. *See Jarose v. Cnty. of Humboldt*, No. C 18-07383 SBA, 2020 WL 999791, at \*4  
(N.D. Cal. Mar. 2, 2020).

1 **IT IS SO ORDERED.**

2 Dated: December 21, 2023

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4 SUSAN ILLSTON  
United States District Judge